

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WITSCHHEY, WITSCHHEY & FIRESTINE CO. LPA)	CASE NO. 5:10CV1356
)	
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	
)	MEMORANDUM OPINION AND ORDER
)	
JOSEPH F. DANIELE, JR., et al.,)	
)	
)	
DEFENDANTS.)	

Plaintiff Witschey, Witschey & Firestine Co. LPA (“Plaintiff”) has moved for judgment by default (Doc. No. 11) on its Complaint against Defendant Joseph F. Daniele, Jr. and Defendant Titan Development Group LLC (collectively, “Defendants”). Neither defendant has responded to the motion.

Plaintiff filed the instant action against Defendants for breach of contract, claim on account, and promissory estoppel alleging that Defendants owe Plaintiff the principal sum of \$198,102.93 for legal services rendered. (Doc. No. 1.) Plaintiff seeks to recover the principal sum owed, plus interest of 18 percent per annum since June 6, 2010. The Docket demonstrates that both defendants were properly served the Summons and Complaint (*see* Doc. No. 8), and Defendants failed to defend against the Complaint within 21 days of service. Neither defendant is an infant nor an incompetent person. (Doc. No. 11-1 at ¶ 8.) Pursuant to Fed. R. Civ. P. 55(a), the Clerk of Courts entered Defendants’ default. (Doc. No. 10.) Accordingly, Plaintiff’s motion for default judgment

is properly before this Court pursuant to Fed. R. Civ. P. 55(b).

Plaintiff submitted the affidavit of Frank J. Witschey in support of its motion. (Doc. No. 11-1.) The affidavit demonstrates the following: Plaintiff provided legal services to Defendants starting in January 2001. (*Id.* ¶ 4) Under the regular course of business, Plaintiff would bill Defendants on a monthly basis, and Defendants would either pay the bill in its entirety or incur interest at 18 percent per annum on the unpaid amount. (*Id.* ¶ 5.) Defendants ceased paying Plaintiff's bills and refused to pay Plaintiff for legal services provided. (*Id.* ¶ 6.) Ohio Civ.R. 10(D) governs a claim on an account and requires that "a copy of the account [. . .] be attached to the pleading." Ohio courts hold that to fulfill Rule 10(D):

An account must show the name of the party charged and contain: (1) a beginning balance (zero, or a sum that can qualify as an account stated, or some other provable sum); (2) listed items, or an item, dated and identifiable by number or otherwise, representing charges, or debits, and credits; and (3) summarization by means of a running or developing balance, or an arrangement of beginning balance and items which permits the calculation of the amount claimed to be due.

Gabriele v. Reagan, 57 Ohio App.3d 84, 86-87 (1988) (internal citations omitted). The accounting summary that Plaintiff attached to the Complaint (Doc. No. 1-1) meets the necessary requirements. Thus, Plaintiff is entitled to a default judgment under Fed. R. Civ. P. 55(b), and its motion for relief is hereby **GRANTED**.

Fed. R. Civ. P 55(b)(1) permits entry of a default judgment by the Clerk of Courts if "plaintiff's claim is for a sum certain or a sum that can be made certain by computation." Plaintiff's affidavit and attached accounting summary demonstrate that as of June 9, 2010, Defendants owed Plaintiff \$198,102.93. (*Id.* ¶ 7.) Plaintiff further claims that it is entitled to interest in the amount of 18 percent per annum from June 9, 2010.

(*Id.*) Ohio Revised Code § 1343.03 establishes the rate of interests for breach of contract claims and claims on account. Under that statute, interest due on breaches of oral contracts and claims on account, such action brought here (*see* Compl. ¶ 6, Doc. No. 1), are set pursuant to Ohio Revised Code § 5703.47, which provides that each year the Ohio Tax Commissioner shall set the rate based on the federal short-term rate plus three percent. In accordance with the statute, Plaintiff is entitled to interest at the rate of four percent per annum, not at the requested rate of 18 percent. *See* http://www.courtclerk.org/forms/judgement_interest_2010.pdf.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that Plaintiff is awarded judgment against Defendants in the amount of \$198,102.93, plus interest at the rate of 4 percent per annum from June 6, 2010.

IT IS SO ORDERED.

Dated: September 16, 2010



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE